PART IV

Section 1-C—(II)

RULES AND NOTIFICATIONS ISSUED BY THE STATE GOVERNMENT UNDER THE CENTRAL ACTS.

GOVERNMENT OF MYSORE.

(LABOUR DEPARTMENT).

Labour Dispute.—Industrial Dispute between the Workmen and the Management of Sri Krishnarajendra Mills, Limited, Mysore.

Award of the Industrial Tribunal, Bangalore—Published.

Read the following papers :—

1. Letter No .I T. No. 1472/62-63, dated the 15th December 1962, from Sri S. S. Malimath, Presiding Officer, Industrial Tribunal, Bangalore.

BEFORE THE INDUSTRIAL TRIBUNAL IN MYSORE, BANGALORE.

Dated 15th December 1962.

Present :

Sri S. S. Malimath B.A., LL.B. ... Presiding Officer.

I. D. No. 12 of 1961

Workers of Sri Krishnarajendra Mills, Ltd., Mysore, by the Secretary,

(1) Sri Krishnarajendra Mills' Labour Association, Mysore and

(2) Sri Krishnarajendra Mills, Workers' Union, Mysore ... *I Party.*

Vs.

The Management of Sri Krishnarajendra Mills, Ltd., Mysore ... *II Party.*

AWARD.

This case was referred to this Tribunal under Sec. 10 (1) (d) of the Industrial Disputes Act, 1947, by the Government of Mysore, in their Order No. LLH 169 LMW 60 dated 10th may 1961, the dispute being implementation of the recommendations of the wage Board for Cotton Textile Industry. The workmen in this case are represented by two bodies *viz.* (1) Labour Association and (2) Workers' Union. They are numbered as Parties Nos. 1 (a) and 1 (b) respectively.

2. Along with the Order of Reference a copy of the statement of demands dated 12th September 1960 put in by the Labour Association was sent to the Tribunal by the Government. As many as eleven demands are set out therein. As the Reference relates only to the recommendations of the Wage Board, the I Party was content to press the following demands only *viz.* (1) an increase of Rs. 6 per mensem from 1st January 1960 (increase of Rs. 2 per mensem from 1st January 1962 was not pressed as the same was granted), (2) it was claimed that the award dated 27th June 1959 should not be set off against the above increase, (3) bonus, over-time wages, provident fund and other benefits due on account of the said increase should be calculated with effect from 1st January 1960, (4) D.A. should be increased from 0·17 nP. to 0·21 nP. with effect from 1st January 1961 and so on, (5) arrears on implementation of these demands, should be paid as from 1st January 1960, and (6) other benefits such as night shift allowance, etc. should not be discontinued. Party 1(b) has not put in any separte demands.

3. The Rejoinder of the II Party was put in on 3rd July 1961. It, however, makes a reference to some preliminary objections put in by them on 29th May 1961 relating to the constitution of the Tribunal and to the matter being not an industrial dispute capable of being referred under Sec. 10(1)(d). The main contention set out in the Rejoinder dated 3rd July 1961 is that during the pendency of I. T. No. 3 of 1958 there was a settlement between the parties on 28th May 1959 by which increase in the basic wages was given to the workmen which was actually paid on 30th May 1959. A report about the Settlement having been made to the Tribunal, a formal award was given on 18th June 1959, in which the settlement was appended as an annexure. The increase in wages were in fact given by this settlement and they cannot be deemed to have been awarded by the Tribunal as a result of adjudication. They ought to be set off against the increase of Rs. 6 recommended by the Wage Board. The II Party is even now ready and willing to implement the recommendations of the Wage Board by giving the remaining portion of increments. But the I Party declined to accept the same. It was contended that since the Wage Board was set up by the Central Government, the State Government has to refer to an Industrial Tribunal, matters relating to the implementation of the Board's recommendations. It is also urged that the implemenation of the recommendations of the Board is not an industrial dispute and cannot be referred for adjudcation and that the Tribunal has no jurisdiction. It is added that the demand for increased D. A. is not contained in the recommendations of the Board.

4. On these pleadings, the following five issues were framed on 21st August 1961.

"I. Does the II Party prove that the additional payments made to its workmen were by reason of an agreement and not under the award in I. T. No. 3 of 1958 ?

II. Do they further prove that they are entitled to set off such payments to workmen against the increments of Rs. 6 per month recommended by the Wage Board ?

III. Does the II Party prove that the Reference is invalid and ought to be rejected on the ground that the I Party has not yet terminated either the agreement dated 28th May 1959 or the award in I. T. No. 3 of 1958?

IV. Are the workmen entitled to Dearness Allowance at the rates noted in para 7 of the claim statement dated 12th September 1960?

V. Are the workmen entitled to benefits of additional bonuses, provident fund etc. payable under the recommendations of the Wage Board with retrospective effect from Ist January 1960 OR any other date?

5. The I(a) Party has produced 5 documents while the I(b) Party has put in 4 documents. They are marked as Exhibits W-1 to 7. I(a) Party has put in affidavits of two of its witnesses and I(b) Party has put in 4 affidavits. The II Party has put in 11 documents. Of them, 8 documents have been exhibited as Exts. M-1 to 8. They have put in an affidavit of only one witness Sri L. Kandaswamy, General Manager of the Mills.

6. The facts of the case are practically admitted by the Parties. The dispute lies mainly in respect of their interpretation. It appears that there were no wage scales or grades in the II Party Mills. Demand for the same was being put up by the workmen. By an order dated 6th August 1957, the Government of Mysore referred such a dispute to the Industrial Tribunal for adjudication. It was first numbered as I. T. No. 37 of 1957 and later as I. T. No. 3 of 1958 before the Additional Industrial Tribunal. On 28th October 1958, the Management filed an application to the Tribunal stating that the Wage Board was constituted by the Government of India and requesting the Tribunal to adjourn its proceedings as the matters in dispute were the same as those to be tackled by the Wage Board. A copy of this application is Ext.M-2. On 8th November 1958, the workmen put in their objections (Ext.M-3) adding that if the Management agrees to fix the wage scales in accordance with the recommendations of the Wage Board from the date of Reference, an award to that effect may be passed accordingly. The Tribunal declined to adjourn the proceedings *sine die*. Later on Parties negotiated and arrived at a settlement on 28th May 1959. According to the terms thereof a revised and increased wage schedule was to come in force and a general increase was to be given effect to from 1st April 1958. The amount of such an increase was actually paid to the workmen on 30th May 1959. On 9th June 1959, this settlement was presented to the Tribunal and a Consent Award was actually passed on 18th June 1959. The same was duly published in the Government Gazette on 16th July 1959.

7. In the meantime, Wage Board was constituted by the Order of the Government of India dated 30th March 1957. The report of that body is dated 27th November 1959. Among other things, they recommended an increase in the pay scales. They divided the inudstry into two categories. The City of Mysore where the present industry is located, came within the category No. 2. For such industries, it was recommended that " an increase

at the average rate of Rs. 6 per month per worker shall be given to all workers from 1st January 1960 and a further flat increase of Rs. 2 per month per worker shall be given to them from 1st January 1962" (*vide* para 106 of the Report, Ext. M. 7). After the Report was duly considered by the Government of India, a resolution was passed by the Government of India on 2nd March 1960, *vide* Ext.M 8. Para 6 on page 66 of Ext. M 8 states as follows:—

> "There have been certain increases in the wages which have taken place in different textile units since the industry made their submission to the Wage Board. All such increments or increases, excepting the increases awarded by an Industrial Tribunal or by any other statutory body, that have been so given by the textile units, will be considered a part of any increase that might take place as a result of the implementation of the Wage Board's recommendations in different aspects."

8. Upto this stage the parties are agreed on the facts. It is on the interpretation of the above clause that there is a difference between the two parties, The II Party accepts the recommendations of the Wage Board and is prepared to give an increase of Rs. 6 per month. According to them, they have given an increment of Rs. 3.25 nP. per month by the settlement dated 28th May 1959. They contend that the above para 6 of the Government Resolution entitles them to set off this amount and that they are liable to pay additional increase of Rs. 2.75 nP. only. According to the interpretation of the I Party, clause (6) of the Government Resolution excludes increases awarded by the Industrial Tribunal and therefore the increases given in 1959 being those granted as a result of the Award in I. T. No. 3 of 1958. They cannot be deducted. In effect they want a further increase at the rate of Rs. 6 per month. Thus, the main point of dispute hinges on the interpretation of the increment given in 1959 as to whether it was given by an award of Industrial Tribunal or by a Settlement between the Parties. These questions are covered by Issues Nos. I and II.

9. The Wage Board which was constituted on 30th March 1957 took two years and 8 months to make its report on 27th Novermber 1959. A perusal of clause (6) of the Government resolution above quoted shows that the Government had taken into consideration the fact that after constitution of the Wage Board several textile units had given increases in wages. As the Wage Board suggested a flat increase at the rate of Rs. 6 per month, the Government considered the question as to whether the increases given by the Units should be set off against the amount of increase recommended. The Government was evidently of the view that the increases given after the constitution of the Wage Board ought to be deducted from the amount of increase recommended. The Government however sought to make an exception in the case of "increases awarded by the Industrial Tribunal", in all other cases the increases were deemed to be part of the amount recommended by the Wage Board. Hence, the point for consideration would be whether in the present case the increases given in 1959 were the result of a private settlement or of an award of the Industrial Tribunal.

10. The facts leading to the increase have been set out in detail at an earlier stage. They are undisputed. They show that a settlement was arrived at on 28th May 1959 and the agreed settlement was placed before the Industrial Tribunal. The Tribunal accepted the same and passed an award in terms thereof. It is contended by both the First Parties that all statutory requirements of an award are to be found in the award in I. T. No. 3 of 1958 published in the Gazette (*vide* Ext. W-5). It is thus urged that it is nothing short of an award and that it should be deemed to comply with the requirements of the award contemplated in para 6 of the Government resolution. On behalf of the II Party, it is not disputed that Ext. W-5 is an award so far as its Form is concerned, but it is contended that in substance, it is only a settlement clothed in the form of an award.

11. The term " Award " is defined in Section 2(k) as meaning "an interim or final determination of any industrial dispute...by an Industrial Tribunal...". From this, it is clear that a matter in dispute must have been determined by an Industrial Tribunal which means that the Tribunal should take into consideration the evidence for and against a particular matter in dispute and by applying its own mind it should decide the question. In the present case, no such thing has been done by the Tribunal. The matters in dispute were all settled or given up by the parties themselves and they placed before the Tribunal the terms of their own settlement. The Tribunal merely accepted the settlement thus arrived at by the parties and by adopting that settlement it passed an award in terms thereof. The Presiding Officer of the Tribunal himself calls it a " Consent Award ". He adopts the settlement and its terms and bodily incorporates the same as annexures I and II appended to the award along with the schedules. Hence, in substance it is a settlement though in form it is an award. The representatives of I (a) and I (b). Parties draw my attention to the fact that the Presiding Officer has applied his mind to the matters in this case. The matters to which he has applied his mind relate to the question whether the settlement may be adopted by him and an award passed. In other words, he has tried to satisfy himself that the award is *bona fide* and that the terms are not prejudicial to the interest of the workmen, and so on. But it is evidently clear that he has not applied his mind to the matters in dispute nor to decide or determine the matters under reference. Hence, it cannot be said to come within the definition of 'Award'. I hold that in substance it is a settlement although in form, it is an Award. It cannot be included in the term 'Award' contemplated in para 6 of the Government resolution in Ext. M-8.

12. A point of some importance in this connection came up for consideration before the Kerela High Court, in the case of Thomas *vs.* Industrial Tribunal and others, reported in 1960, II LLJ 523. In that case also the parties entered into a settlement and requested the Tribunal to pass an Award in terms thereof. One of the terms thereof was that the appointments and promotions made by the Management after a particular date should be examined by the District Labour Officer. In pursuance thereof, the said Officer examined and made a report about two of the employees. Acting on that report, the Management demoted the two employees and

promoted the two others. The employees so demoted contended that the report of the District Labour Officer was *ultra vires* and inoperative and that action taken thereupon by demoting employees, was also *ultra vires* and *void*. The High Court held :—

> "If the parties to the dispute consent, the Tribunal can make an award in terms of the Agreement. It is equally clear that the basis on which such an award binds, would not be adjudication by an authority, properly vested with powers but the consent of the parties, so that should the award direct further steps, those would also rest on consent. Therefore the compromise directing somebody and the latter doing something would become act of a domestic tribunal."

13. After a careful consideration of the foregoing, I hold that the Increase given in 1959 was not one awarded by an Industrial Tribunal. It was a result of a settlement between parties. Hence the II Party is entitled to a set off of the increases paid as a result of the settlement in I.T. No. 3 of 1958. My findings on Issues Nos. I and II are in the affirmative.

14. Issue No. III arises out of the contention of the II Party that no notice has been given by the I Party expressing their intention to terminate the settlement or the award as required by Section 19 of the Industrial Disputes Act. The fact that no notice has been given, is not disputed by either of the I Parties. The contention of the II Party is that so long as a settlement or an award is not terminated by two months' notice, it continues to be in operation and that so long as it is operative, no fresh dispute can be raised with regard to the matters covered by the settlement or award. In support of this latter proposition of law, they rely upon a decision of the Bombay High Court in the case of Poona Mazdoor Sabha *Vs.* G. K. Dhutia etc., reported in 1956 II LLJ 320. In that case, it is observed by His Lordship Chagla C.J. :—

> " There is no specific provision in the Industrial Disputes Act, which lays down that an industrial dispute cannot be raised with regard to a matter which is the subject of a settlement under Section 12 read with Section 19 (2) of the Act. Under Section 19 (2) a settlement arrived at in the course of conciliation proceedings shall be binding for such period as is agreed upon by the parties and if no such period is agreed upon, for a period of six months. When the legislature provides for a particular agreement being binding upon the parties to an Industrial Dispute, it clearly intends that there is industrial peace with regard to the subject matter of the agreement for the duration of that agreement and it is obvious that if there is to be an industrial peace for the period contemplated, then neither party to that settlement could be allowed to raise an industrial dispute with regard to that settlement. It is thus clear that neither an industrial dispute could be raised with regard to matters covered by such settlement nor could matters covered by such settlement from the subject matter of conciliation proceedings under Section 12 of the Act."

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This point is met on behalf of the workmen on two grounds. Firstly, they contend that the requirements of a notice can be waived by a party entitled to notice and that in this case the II Party has waived the same. Secondly, it is urged that there is no specific form of notice prescribed and that the charter of demands and other communications from the workmen can be deemed to be notice to the Management. In support of these contentions, reliance is placed on the following decisions.

15. In the case of workmen of Continental Commercial Company (P) Ltd. *vs.* the Government of West Bengal reported in 1962 I LLJ 86, there was a settlement arrived at between the parties. Subsequently, the Union representing the workmen submitted a charter of demands. No specific notice in writing was given by the workmen terminating the settlement. The management made counter offers and took part in the conciliation proceedings. The demands were referred for adjudication. In the Writ Petition preferred by the workmen, the High Court of Culcutta ultimately held that—

> "However a notice under Section 19 (2) of the Act could be waived by the Party to whom the notice is to be sent. In view of the fact that the Company in the instant case took part in the subsequent conciliation proceedings and also made certain counter offers and that it never took any objection in the course of conciliation proceedings or even before the Industrial tribunal that the old settlement was in force, it must be taken that it waived the formal notice of termination of settlement as contemplated under Section 19 (2) of the Act."

16. On the question of sufficiency of the notice, there is a decision of the Supreme Court of India reported in 1962 I LLJ 661 (workmen of Western India Match Company). In that case there was a consent award deciding the scales of pay and rates of D. A. No formal notice was given under Section 19 (2). Various representations were however made on behalf of the workmen in respect of the said two demands. Their Lordships observe :—

> "In the circumstances, the various representations made on behalf of the workmen and the representation of charter of demands were held sufficient to terminate the settlement. Hence absence of a formal notice under Section 19 (2) of the Act terminating the settlement was held immaterial in view of subsenquent representations made by the workmen and the other facts stated *supra*."

17. We now turn to the facts and evidence in this case. The demands of the I Party are contained in the writing, dated 12th September 1960 reffered to above as Claim Statement. They not only indicate the demand in in respect of increase of Rs. 6 *plus* Rs. 2 as recommended by the Wage Board, but they specifically mention that there should be no deduction of the increment awarded on 27th June 1959. Besides, in para 7 of the Rejoinder put in by the II Party, a reference is made to this point and it is stated that the workmen declined to accept an increment of Rs. 2·75 per mensem only. It is stated that "on account of this difference, the agreement that was prepared

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as a result of the discussion in June, July and August 1960 fell through". The draft agreement referred to, has been produced by the II Party is Annexure 'A'. It is dated 23rd August 1960. It also makes the same point clear. Ext. M-1, dated 23rd September 1960, is notice put up by the II party clarifying their offer of increase by which they wanted to deduct the earlier increment given in 1959. On 14th October 1960, the Management claims to have written to the Commissioner of Labour explaining its stand. A copy of this letter has been produced by them at Annexure 'E'. That letter sets out the stand taken by both the parties. It is quite clear that the workmen did not want to continue to be bound merely by the terms of the settlement and that they wanted an increase of Rs. 6 more in addition to it. Ext. M-5, dated 7th May 1961 shows that both the parties agreed for the appointment of a Joint Committee to examine the matters in dispute. It appears from Ext. M. 6, the letter written by the Labour Commissioner to the General Manager of the Mills on 27th January 1961, that there was a move to appoint a Board of Arbitrators under Section 10 (a) to settle these disputes. Ext. W 4 is the report of the Assistant Commissioner of Labour and Conciliation Officer, Mysore, in respect of the conciliation proceedings. It sets out the points in dispute between the parties. The main contention was the one regarding setting off the increase amounting to Rs. 3·25 per month given in 1959. It appears that the conciliation proceedings took place on the 6th and 7th of May 1961. The question of set off was then proposed to be referred for arbitration. The management took time to consider till the next day and declined to accept the arbitration.

18. From the foregoing, it appears that the workmen had made it abundantly clear to the management that they were not satisfied with the amount awarded in I. T. No. 3 of 1958 and also that while giving the increases as recommended by the Wage Board, the earlier increments under the award should not be set off. The Mangement also was prepared (inspite of the existence of the award in I. T. No. 3 of 1958) to give further increments of Rs. 6 per month. They never contended that the workmen were not entitled to this or any other increment on the ground that the award in I. T. No. 3 of 1958 was in operation unterminated. Under these circumstances, I think, the Management can be said to have waived the notice under Section 19 (2). It could also be held that they had in fact sufficient notice as observed by the Supreme Court in the Western India Match Co.'s case. My finding on issue No. III is in the negative.

19. In para 107 (page 23) of the Report of the Central Wage Board, it is recommended that the Dearness Allowance should be linked with the cost of living index and that the index of the nearest centre should be taken for the purpose. It is admitted by both that the unit in question has to rely on the cost of living index of Mysore City. It is argued by the representative of the II Party that since no specific recommendation for any amount of D.A. has been made by the Wage Board, the claim of the I Party in respect of specific Dearness Allowance is not tenable. He, however, has no objection to the recommendation made in para 107 of the Report being brought into force. It is contended that the demands noted in para 7 of the claim statement,

dated 12th October 1960 are those linked with the cost of living index at Mysore. If so, there is hardly any difference between the parties. The demand noted in Issue No. IV deserves to be conceded.

20. Issue No. V is based on the claim of the I Party that the benefits of additional bonus, provident fund, etc., should be with respective effect from 1st January 1960. The representative of the II Party fairly concedes the point by stating that a grant of this demand does not seriously effect the II Party. Under these circumstances my finding on Issue No. V will be in affirmative.

21. In conclusion, I hold that the I Party workmen are entitled to get increase of Rs. 6 per month from 1st January 1960 as recommended by the Wage Board and also that out of the same, the amount of the increase already given as a result of the award in I.T. No. 3 of 1958 should be set off. The claims of the workmen noted in Issues Nos. IV and V are also awarded. As both parties succeed in parts, all the parties will bear their own costs. I pass an award accordingly.

S. S. MALIMATH,
Presiding Officer,
Industrial Tribunal.

ORDER NO. PLM 579 LLD 62, DATED BANGALORE, THE 21ST DECEMBER 1962.

WHEREAS by State Government Order No. LLH 169 LMW 60, dated 10th May 1961, the Industrial Dispute between the Workmen and the Management of Sri Krishnarajendra Mills, Limited, Mysore, was referred to the Industrial Tribunal, Bangalore, for adjudication ;

AND WHEREAS the Industrial Tribunal, has submitted to the State Government its award in respect of the said industrial dispute ;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said Award as above in the *Mysore Gazette.*

By Order and in the name of the Governor of Mysore,

B. N. RAMA RAO,
Under Secretary to Government
P.H., Labour and Municipal
Administration Department.